



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

County Administration
Attn: Mr. Art Warren
Chairman
Board of Supervisors
9901 Lori Road
Chesterfield, VA 23832

APR 6 2011

Re: Municipal Separate Storm Sewer System Inspection Report
and Administrative Order (EPA Docket No. CWA-03-2011-0150DN)

Dear Mr. Warren:

On April 21-22, 2010, the United States Environmental Protection Agency (EPA) conducted an inspection to investigate compliance with the National Pollutant Discharge Elimination System (NPDES) permit issued for operation of Chesterfield County's municipal separate storm sewer system (MS4). Enclosed is a copy of the report documenting that inspection.

Also enclosed is a copy of an Administrative Order (Order) issued this date pursuant to Section 309(a) of the Act, as amended, 33 U.S.C. § 1319(a). This Order contains findings that Chesterfield County has violated Section 301 of the Act, 33 U.S.C §§ 1311. You should carefully read the contents of the enclosed Order, and communicate to each responsible official, agent or employee the actions which each such person must take to ensure compliance with its terms. Failure to comply with the terms of the Order may result in further enforcement actions being taken, including a civil suit for penalties and injunctive relief, or a criminal prosecution as appropriate.

If you require any information or assistance regarding this matter, please contact Allison Graham, U.S. EPA Region III, NPDES Enforcement Branch, 215-814-2373 or Andrew Duchovnay, Senior Assistant Regional Counsel, 215-814-2484.

Sincerely,

Catherine A. Fibus for

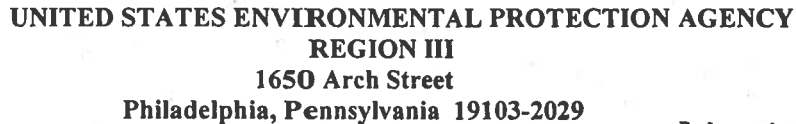
Jon M. Capacasa, Director
Water Protection Division
U.S. Environmental Protection Agency, Region III

Enclosure

cc: Anne Crosier, VA DCR



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In the Matter of:

Chesterfield County, Virginia
9800 Government Center Parkway
Chesterfield, VA 23832

Respondent

Adrian Walsh
Attorney for OSPA

Docket No. CWA-03-2011-0150DN
FINDINGS OF VIOLATION
AND
ORDER FOR COMPLIANCE

I. STATUTORY AUTHORITY

1. The following Findings of Violation and Order for Compliance (Order) is issued under the authority vested in the Administrator of the Environmental Protection Agency (hereinafter "EPA") under Section 308 of the Clean Water Act (CWA or Act), 33 U.S.C. 1318 and Section 309(a) of the CWA, 33 U.S.C. Section 1319(a). The Administrator has delegated these authorities to the Regional Administrator of Region III, who in turn has delegated them to the Director of the Water Protection Division of Region III.

II. STATUTORY AND REGULATORY BACKGROUND

2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutants (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System (NPDES) program under Section 402 of the Act, 33 U.S.C. § 1342.
3. EPA is authorized under Section 308 of the CWA, 33 U.S.C. § 1318, to require owners and operators of point sources to establish records and make such reports as may be necessary to carry out the purpose of the Act, including but not limited to:
 - (a) Developing or assisting in the development of any effluent limitation, or other limitation, prohibition, effluent standard, pretreatment standard, or standard of performance under the Clean Water Act;

Appomattox River. Stormwater from the County drains to the Appomattox, Lower James, and Middle James-Willis watersheds which flow to "water of the United States" as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7); 40 C.F.R. § 232.2; 40 C.F.R. § 122.2.

13. The Virginia Department of Environmental Quality (VADEQ) issued to Respondent an NPDES MS4 Discharge Permit No. VA0088609 on March 24, 2003 (hereinafter the "MS4 Permit"). The MS4 Permit expired on March 23, 2008, and has been administratively extended to the present. (MS4 Permit Discharge Permit No. VA0088609 is attached hereto as Exhibit A.)
14. On April 21 and 22, 2010, a compliance inspection team comprised of authorized representatives of EPA inspected Respondent's MS4 program.

IV. VIOLATIONS

Count 1

15. Pursuant to Part I.B.1.b.(2) of the MS4 Permit, "[t]he permittee shall continue the implementation of the current storm sewer mapping and field-screening procedures for identifying unauthorized non-storm water discharges and improper disposal into the storm sewer system. Priority shall be placed on segments of the storm sewer system that receive drainage from industrial and commercial sources."
16. Pursuant to Part I.C.4 of the MS4 Permit, "[t]he permittee shall provide adequate finances, staff, equipment, and support capabilities to implement all parts of the Storm Water Management Program required by Part I.B of this permit."
17. At the time of the inspection, County staff estimated that hundreds of storm water outfalls are present in both industrial and commercial areas in the County. The County has two Dry Weather Screening Inspectors who jointly inspect between 40 and 100 major outfalls (greater than 36" in diameter) a year. County staff stated that most major outfalls have been visited at least once in the past eight years, and that inspectors attempt to visit problem areas approximately every three years. Respondent has no current plans to hire additional Dry Weather Screening Inspectors due to budget constraints.
18. Respondent failed to comply with Parts I.B.1.b(2) and I.C.4 of the MS4 Permit by failing to commit adequate resources to the inspections which resulted in an inability to inspect a sufficient number of outfalls in the County in violation of the Permit.

Count 5

29. Pursuant to Part I.C.1 of the MS4 Permit, Chesterfield County shall ensure that “[a]ll pollutants discharged from the municipal separate storm sewer system shall be reduced to the maximum extent practicable...as specified in Part I.B of this permit.”
30. On April 21, EPA and EPA representatives inspected the Chesterfield County Fleet Maintenance Facility located at 9700 Lori Lane, Chesterfield VA. Inspectors observed an undermined silt fence with sediment accumulation beyond the silt fence in an MS4 drainage channel.
31. Respondent failed to comply with Part I.C.1 of the MS4 Permit by failing to reduce pollutants discharged from the MS4 to the maximum extent practicable.

Count 6

32. Pursuant to Part I.C.4 of the MS4 Permit, “[t]he permittee shall provide adequate finances, staff, equipment, and support capabilities to implement all parts of the Storm Water Management Program required by Part I.B of this permit.”
33. Chesterfield County offers a storm water training class; however, not all County personnel who may be involved in identifying storm water issues are required to attend the class. The County cannot consistently identify storm water issues to control and monitor without standardized training requirements.
34. Respondent failed to comply with Part I.C.4 of the MS4 Permit by failing to provide adequate staff and support capabilities to implement all parts of the SWMP required by Part I.B of the Permit.

Count 7

35. Pursuant to Part I.B.1.d of the MS4 Permit, the permit requires “[a] program to continue implementation and maintenance of structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites.”
36. The EPA inspection team observed that the County differentiates between what it considers to be a violation of local code and a deficiency. The County does not consider construction site operators to be in violation of local code until the operator has been issued a notice to comply, and the operator fails to meet the time frame for corrective action. The utilization of this procedure creates an unnecessary delay in the County’s ability to reduce pollutants in storm water runoff from construction sites.
37. On April 22, 2010, EPA and EPA representatives conducted a site visit at Clover Hill High School located on Genito Road. Inspectors observed a storm water control, consisting of silt fence and stone, which had failed resulting in a discharge of sediment from the construction site boundary through a drainage culvert. The County inspector did not identify this as a deficiency or violation while on site, thus allowing the deficiency to exist uncorrected.

47. At the above-mentioned Magnolia Lakes construction site, inspectors also observed that two turbidity curtains had been installed in the receiving waterbody referred to as Sportsman Lake. Site conditions observed by the EPA indicated that additional BMPs could have been maintained in order to prevent sediment intrusion into Sportsman Lake. As a result, the County-approved Erosion and Sediment Control Plan was not in accordance with the Chesterfield County Erosion and Sediment Control Ordinance.
48. Respondent failed to comply with Part I.B.1.d(1) of the MS4 Permit by failing to operate in accordance with the Chesterfield County Erosion and Sediment Control Ordinance for the Magnolia Lakes construction site.

V. CONCLUSION OF LAW

49. Respondent's failures to comply with the MS4 Permit constitute violations of the Permit and Section 301 of the CWA, 33 U.S.C §1311.

VI. ORDER FOR COMPLIANCE

AND NOW, this 6th day of April, 2011, Respondent is hereby ORDERED, pursuant to Section 309(a) of the Act, 33 U.S.C. §1319(a) and Section 308 of the Act, 33 U.S.C. Section 1318, to do the following:

50. Within sixty (60) days of the effective date of this Order, Respondent shall:
- a. Modify its storm water management program, in accordance with Part I.B.2 of the MS4 Permit, to require actions to rectify the violations identified in this Order and any additional actions needed to come into compliance with the MS4 Permit. Submit the revised Plan to:

Allison Graham, Enforcement Officer
U.S. EPA, Region III, (3WP42)
1650 Arch Street
Philadelphia, PA 19103-2029
(215) 814-2373
 - b. Provide certification, signed by a responsible corporate officer, as defined in 40 CFR § 122.22, that reads as follows: *"I certify that the information contained in or accompanying this submission is true, accurate, and complete. As to the identified portion(s) of this submission for which I cannot personally verify its truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."*



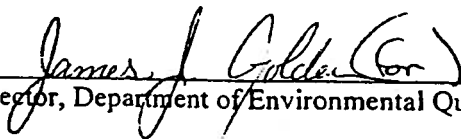
COMMONWEALTH of VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY

Permit No. VA0088609
Effective Date: March 24, 2003
Expiration Date: March 23, 2008

AUTHORIZATION TO DISCHARGE UNDER THE
VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM
AND
THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act as amended and pursuant to the State Water Control Law and regulations adopted pursuant thereto, the Chesterfield County is authorized to discharge from all portions of the municipal separate storm sewer system owned and operated by the permittee to surface waters of the State.

The authorized discharge shall be in accordance with this cover page, Part I – Storm Water Management Program Requirements, Part II – Conditions Applicable To All VPDES Permits, as set forth herein.



Director, Department of Environmental Quality

3-24-03

Date

Exhibit A

STORM WATER MANAGEMENT PROGRAM REQUIREMENTS

A. WATERSHED MANAGEMENT AND MONITORING REQUIREMENTS

1. The Department of Environmental Quality and the permittee may assess improvement in the quality of storm water from the municipal separate storm sewer system based on the information required by this Part, plus any additional information generated by the permittee.
2. The permittee shall implement the *Watershed Assessment and Stream Protection (WASP) Program* as detailed in Section 4 of the permit reissuance application. The WASP Program shall be conducted to develop a better understanding of storm water runoff and its effect on the quality of the County's waters, identify those sources of water quality degradation and develop strategies to minimize or eliminate the sources of water quality impairment. The program shall consist of three major components, including: 1) data collection to determine the level of stream impairment; 2) identification and assessment of sources which may be contributing to water quality degradation; and 3) development and implementation of controls or Watershed Management Strategies to preserve, protect and/or restore the quality of county waters.

- a. Monitoring Requirements

The permittee shall conduct annual in-stream monitoring during the spring on a representative number of stream sites in at least one of the County's four primary watersheds. The number and location of sites shall be determined by the permittee and shall be sufficient to fully assess water quality issues within each watershed. The four primary watersheds Swift Creek, Falling Creek, Appomattox River, and tributaries of the James River shall be assessed on a rotational basis during the term of the permit.

The permittee shall determine the level of impairment of the selected stream segments utilizing the following methods:

- (1) Chemical Assessment:

Chemical water quality analyses, using approved protocols and methods to ensure the quality of the data. The following parameters shall be analyzed according to the methods listed under 40 CFR Part 136:

Hardness	Total Phosphorus
Total Ammonia	Total Suspended Solids
Nitrate/Nitrite	Biochemical Oxygen Demand (BOD ₅)
Dissolved Phosphorus	Fecal Coliform

The permittee may add to the above list of parameters at their discretion, any deletion of parameters from the list must be with the agreement of the Virginia Department of Environmental Quality (VDEQ).

- (2) Biological Assessment:

Benthic macroinvertebrate assessments using the U.S. Environmental Protection Agency's (EPA) Rapid Bioassessment Protocol (EPA 841-B-99-002 - as amended) or other method as approved by VDEQ.

- (3) Physical Stream Assessment:

1. Contents of the Program

The Storm Water Management Program shall contain the following four elements:

- a. A program to utilize structural and source control measures to reduce pollutants that are discharged through the municipal separate storm sewer system in storm water runoff from commercial and residential areas, including a schedule for implementing the controls.

As part of the program outlined by the County in the Storm Water Management Program :

- (1) The permittee shall continue with the existing maintenance program for structural controls owned, operated or required by the permittee.

The permittee is responsible for obtaining any required State or federal permits necessary to complete maintenance activities, including permits for land disturbance, wetlands disturbance, dredging, etc.

- (2) The permittee shall adhere to and, where applicable, enforce all those components of The Plan for Chesterfield County, the Storm Water Management Program , and all storm water related ordinances pertaining to development and redevelopment in Chesterfield County.

- (3) Public streets, roads, and highways maintained by the permittee shall be operated and maintained in a manner to minimize the discharge of pollutants, including those pollutants related to deicing or sanding activities.

- (4) The permittee shall maintain the existing programs to assure that stormwater quantity control basins are retrofitted, where feasible, to improve their water quality functions.

- (5) The permittee shall maintain its program to reduce the pollutants in discharges to the municipal separate storm sewer system associated with the application of pesticides, herbicides and fertilizers.

- (6) The permittee shall continue to administer and improve the existing public education efforts designed to educate the general public and other groups about storm water pollution prevention, including but not limited to the application of herbicides, pesticides, and fertilizer.

- b. A program and schedule to detect and remove, or to notify a discharger to apply for a separate VPDES permit for, unauthorized non-storm water discharges and/or improper disposal into the municipal separate storm sewer system.

As part of the program outlined by the County in the Storm Water Management Program:

As part of the program outlined by the County in the Storm Water Management Program :

- (1) The permittee shall implement the industrial inspection procedures outlined in the Storm Water Management Program section of the VPDES Permit Reissuance Application.
 - (2) The permittee shall inspect any new or previously unidentified facilities (as described above), and may establish and implement control measures as necessary for storm water discharges from these facilities.
 - (3) The permittee may monitor, or require the facility to monitor, storm water discharges associated with industrial activity to the municipal separate storm sewer system from facilities described in Part I.B.1.c above. This monitoring program shall be designed by Chesterfield County.
- d. A program to continue implementation and maintenance of structural and nonstructural best management practices to reduce pollutants in storm water runoff from construction sites.

As part of the program outlined by the County in the Storm Water Management Program:

- (1) The permittee shall continue to implement the requirements of the, the Erosion and Sediment Control Ordinance for land disturbing activities.

For land disturbing activities equal to or greater than one acre, the permittee shall notify the construction site owner that they must apply for Storm Water Construction General Permit with the Department of Environmental Quality. The permittee shall maintain records of all approved sites. The permittee shall submit a monthly summary of these approved plans to the Department of Environmental Quality, Piedmont Regional Office, which will include:

- (a) Owners Name
- (b) Owners Address
- (c) Site Name
- (d) Site Address

The Department of Environmental Quality will determine if the land disturbing activity has been covered under a VPDES General Permit and will notify the owner and the permittee if such a permit is required. In addition, the permittee's Erosion and Sedimentation (E&S) Program shall be fully consistent with the requirements of the Department of Conservation & Recreation (DCR). If the permittee does not have a fully consistent program, all efforts to achieve full consistency shall be documented in the annual report.

- (2) The permittee shall evaluate whether or not the recently developed Certified Responsible Land Disturber program being administered by the Department of Conservation & Recreation is effective in promoting improved compliance

by April 10, 2005, April 10, 2006, April 10, 2007, and April 10, 2008. The report shall include the following information for the period covered:

- a. The status of implementing the components of the Storm Water Management Program that are established under Parts I.B.1.a, b, c, and d of this permit. In addition to descriptions of each program element's status, the following specific information shall also be submitted:
 - (1) A chart showing BMPs required and their projected pollutant removal, the number of BMPs that received maintenance and the results of any BMP monitoring efforts on structural BMPs in accordance with Part I.B.1.a.(1) of this permit;
 - (2) The progress on any storm water quantity basin retrofits to provide additional pollutant removal.
 - (3) The progress on the County's public information program to address the following:
 - (a) The number of educational materials disseminated concerning the use and disposal of pesticides, herbicides and fertilizers by commercial applicators and by the general public and groups that received them;
 - (b) The number of educational materials disseminated to promote, publicize, and facilitate public reporting of the presence of non-storm water discharges into the municipal separate storm sewer system and, where practicable, quantification of the public response to the program, through items such as increased reporting of non-stormwater discharges, citizen surveys and similar measures;
 - (c) The number of educational materials disseminated to educate the public on proper management and disposal of used oil and toxic materials and a summary of any new program developed in accordance with Part I.B.1.b.(6) of this permit.
 - (4) The progress on the County's program to reduce pollutants from new development and significant redevelopment, including the following:
 - (a) The number of linear feet of streams or other water bodies protected through the enforcement of the Resource Protection Area criteria of the Chesapeake Bay Preservation Ordinance for new development and redevelopment projects.
 - (b) The amount of phosphorus reduced through the use of BMPs or other pollutant reduction measures.
 - (c) The percentage of exceptions to Chesapeake Bay Preservation Ordinance requirements granted.

- (4) Number of acres treated;
 - (5) Whether or not the BMP is inspected and maintained;
 - (6) How often the BMP is maintained (quarterly, annually, etc.).
- i. A detailed report of all monitoring activities for the reporting year, including the following:
- (1) Site location, date, time, weather conditions and any other general information documenting the monitoring activities;
 - (2) A detailed description of sample collection methods, if different from any approved methodologies;
 - (3) Chemical, biological, and physical monitoring results, including field data sheets, chain-of-custody, laboratory bench sheets and analytical results sheets;
 - (4) Documentation of all QA/QC procedures and results;
 - (5) An analysis and interpretation of the monitoring data and identification of the level stream impairment for the monitoring stream segments;
 - (6) A discussion of any problems encountered during the monitoring activities.
 - (7) A discussion of the watershed assessments conducted;
 - (8) A discussion Watershed Management Strategies identified and implanted; and,
 - (9) Any requests for the modification to the current monitoring program, along with a justification for the request.

C. SPECIAL CONDITIONS

- 1. The permittee shall ensure that all pollutants discharged from the municipal separate storm sewer system shall be reduced to the maximum extent practicable through the continued development and implementation of a comprehensive Storm Water Management Program as specified in Part I.B of this permit.
- 2. The permittee shall effectively prohibit non-storm water discharges into the municipal separate storm sewer system. The permittee may allow discharges of non-storm water or storm water associated with industrial activity as defined at 9 VAC 25-31-120 through the municipal separate storm sewer system if such discharges are:
 - a. authorized by a separate VPDES permit;
 - b. not identified by the permittee or the Department of Environmental Quality to be significant sources of pollutants to State waters and may include the following: water line flushing, landscape irrigation, diverted stream flows, rising ground waters,

CONDITIONS APPLICABLE TO ALL VPDES PERMITS

A. Monitoring

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.
2. Monitoring shall be conducted according to procedures approved under Title 40 Code of Federal Regulations Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.
3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will insure accuracy of measurements.

B. Records

1. Records of monitoring information shall include:
 - a. The date, exact place, and time of sampling or measurements;
 - b. The individual(s) who performed the sampling or measurements;
 - c. The date(s) and time(s) analyses were performed;
 - d. The individual(s) who performed the analyses;
 - e. The analytical techniques or methods used; and
 - f. The results of such analyses.
2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report, or application. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the Board.

C. Reporting Monitoring Results

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to:

Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060-6296

G. Reports of Unauthorized Discharges

Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part II F; or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part II.F, shall notify the Department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the Department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate, and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the Department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of Unusual or Extraordinary Discharges

If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the Department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed.

The permittee shall reduce the report to writing and shall submit it to the Department within five days of discovery of the discharge in accordance with Part II.I.2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the treatment works; and
4. Flooding or other acts of nature.

J. Notice of Planned Changes (continued)

- (2) After proposal of standards of performance in accordance with Section 306 of the Clean Water Act which are applicable to such source, but only if the standards are promulgated in accordance with Section 306, within 120 days of their proposal;
 - b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or
 - c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.
2. The permittee shall give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

K. Signatory Requirements

1. Applications. All permit applications shall be signed as follows:
 - a. For a corporation: By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;
 - b. For a partnership or sole proprietorship: By a general partner or the proprietor, respectively; or
 - c. For a municipality, state, federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes: (i) The chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

M. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit. All permittees with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Board. The Board shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

N. Effect of a Permit

This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.

O. State Law

Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by Section 510 of the Clean Water Act. Except as provided in permit conditions on "bypassing" (Part II.U), and "upset" (Part II.V) nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Sections 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

3. Prohibition of bypass (continued)

- (3) The permittee submitted notices as required under Part II.U.2.
- b. The Board may approve an anticipated bypass, after considering its adverse effects, if the Board determines that it will meet the three conditions listed above in Part II.U.3.a.

V. Upset

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of Part II.V.2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.
2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - a. An upset occurred and that the permittee can identify the cause(s) of the upset;
 - b. The permitted facility was at the time being properly operated;
 - c. The permittee submitted notice of the upset as required in Part II.I; and
 - d. The permittee complied with any remedial measures required under Part II.S.
3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and Entry

The permittee shall allow the Director, or an authorized representative, upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, any substances or parameters at any location.

